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Larry M. Weil, Planning and Community Development Director
Tim Solberg, Senior Planner
Lisa Sankey, Assistant Planner

West Fargo Planning and Zoning Commission
December 9, 2013 at 7:00 P.M.
West Fargo City Hall

Members Present:

- Jerry Beck
- Eddie Sheeley
- Tom Kiewel
- Terry Potter
- Scott Diamond
- LeRoy Johnson
- Connie Carlsrud
- Tom McDougall

Others Present: Larry Weil, Lisa Sankey, Tim Solberg, Dustin Scott, John Hough, Eric Anderson, Craig Geron, Dan Bueide, Mina Hall, Jim Brownlee, Matt Marshall, Lori Gehardson, Ben Davidson

The meeting was called to order by Chair McDougall.

Commissioner Potter made a motion to approve the November 12, 2013 meeting minutes as printed and mailed. Commissioner Johnson seconded the motion. No opposition. Motion carried.

Chair McDougall opened public hearing A13-74 Planned Unit Development Amendment for Lot 5, Block 1 of Geller's 1st Addition (1655 East Main Avenue), City of West Fargo, North Dakota..

Tim reviewed the following information from the staff report:

The property is developed with a welding supply business with a mix of service, retail and warehousing, as well as bulk gases. The applicant proposes replacing existing oxygen storage tanks with larger ones.

The proposed use would require a Planned Unit Development amendment.

This business stores bulk gases which would be in tanks placed behind the building and fenced. The applicant is required to submit detailed development plans which would include tank specifications for review by the West Fargo Fire Department to assure compliance with any health and safety regulations.

This property is located within the CO-R: Redevelopment Corridor Overlay District which is intended to promote orderly development and redevelopment and safe, attractive and desirable spatial patterns and locations for urban land uses adjacent to major street corridors, with full regard for the importance of these corridors as major growth areas for West Fargo and as gateways to the City.

A site plan was submitted showing the proposed tanks, elevations and site layout. The applicant is intending to increase the amount and size of tanks that hold the gases they distribute at this location. From previously submitted plans it appears the existing building is about 19' in height at the mid-roofline. It would be appropriate to limit the height of the tanks to not exceed 19'. Tim reviewed photos of the property and examples of tanks.

The City notified property owners within 150'. An adjacent property owner indicated he was going to visit with a relative who was a member of a fire department to obtain information about the tanks prior to considering any comments.

It is recommended that request be conditionally approved on the basis it is consistent with City plans and ordinances. The conditions for approval are as follows:

1. The applicant consults with the Fire Department regarding health and safety issues for the bulk storage of the proposed gases.
2. The tanks installed do not extend higher than the mid-roofline of the building or 19'.

John Hough, 3658 22nd Street South, Fargo, stated that he owns apartment buildings to the south and has concerns because oxygen is an accelerant and with tank security. If there is a fire it would burn rapidly. He was also concerned with liability in the case of fire should this be approved

There were no other public comments. The hearing was closed

Commissioner Kiewel asked about distance from the tank to the apartment building. Assistant City Engineer Dustin Scott stated about 100'.

Chair McDougall asked about tank height. Eric Anderson, American Welding, stated that there are some with a different diameter, which average in height from 22-24'.

Commissioner Beck asked if other than change in tank size if there would be any other changes such as pressure valves, etc. Tim stated that the applicant provided some spec sheets from potential suppliers. In terms of safety, he would defer to the experts at the fire department. Chair McDougall asked about input from the fire department. Tim stated that they would review it as part of the permitting process. An email was included in the agenda packets indicating they had no concerns at this time.

Mr. Hough asked what the original PUD height restriction was. Tim stated that just that the tanks were hidden behind the building. Mr. Hough stated that with his apartment building along 45th Street, building height was limited. Larry stated that there are height standards in place for residential structures; however, height was not a consideration with this property.

Commissioner Johnson asked if it would be better to have two smaller tanks instead of one larger one. Tim stated that the applicant would like the ability to expand and not have to come back again for review. They currently have two 900 gallon tanks and hope to grow to potentially have two 6,000 gallon oxygen tanks, one 6,000 gallon nitrogen tank, and one 3,000 gallon carbon dioxide tank.

Commissioner Kiewel asked Mr. Hough if he'd visited with his insurance company about his concerns. Mr. Hough stated that he hadn't. Commissioner Kiewel stated that it would be nice to have additional comments from the Fire Department. Larry stated that additional precautions are required for fuel tanks in terms of limiting size and number of tanks. With other types, staff looks to the Fire Department for input.

Larry stated that with the original PUD characteristics there was a lot of protest from area property owners, so zoning was limited to lighter commercial uses. American Welding was viewed as a more service based business. Chair McDougall stated that the City said it was okay at the time; however, to deny would limit their growth. Tim stated that it's the same business with increased demand.

Mr. Hough stated that he's representing his tenants and is concerned with tanks. He indicated he would review this with his insurance company.

Mr. Anderson stated that when they first looked into this, Kendall at the Fire Department reviewed the site with them. There's still a permit review process.

Tim stated that this is being reviewed because the use is intensifying... Increased density, increased activity, increased traffic.

Commissioner Beck made a motion for approval based on staff recommendations. Commissioner Diamond seconded the motion. No opposition. Motion carried.

Chair McDougall opened public hearing A13-75 Land Use Plan Amendment from Office Park to General Commercial All except the North 200' of a 21.05 Acre Tract in the SE¼ of Section, 18, T139N, R49W, City of West Fargo, North Dakota.

Tim reviewed the following information from the staff report:

The applicant is proposing to change the land use plan for the south portion of the property from Office Park to General Commercial to accommodate future zoning and uses.

The developer submitted an application for a Land Use Plan amendment for the south portion of the property – which is to be all but the north 200' of the described tract of land in the SE¼, of Section 18, T139N, R49W (approximately 12.74 acres). Last year the applicant proposed subdividing and developing the property for commercial uses and apartments and withdrew the application based on protest from area property owners.

If this land use plan amendment were approved the applicant would have the ability to subdivide and rezone the property in question for light commercial uses which include permitted uses such as the following: retail, business services, personal services, entertainment, social or recreational, repair services, cultural and educational facilities, schools, churches, public/semi-public facilities, medical and dental facilities, veterinary clinics, hotels, public transportations, greenhouses, automobile service stations and repair shops, parking lots, essential services, child care facilities, social service facilities, and other similar uses which are consistent with the stated purpose of the district. Conditionally permitted uses in this district include apartments above commercial establishments, automobile conversion and sales, multiple dwellings, liquid storage tanks – up to 500 gallons, and veterinary clinics with overnight facilities. If there some objectionable uses, these uses could be restricted when the property is rezoned through the PUD zoning district.

Area property owners were not notified by mail, as the application does not contain a rezoning request at this time, and the property is located 200' from the residential properties. General notice was given in the newspaper.

Staff recommends that following the public hearing consider the following alternatives:

1. Approve the application on the basis that it provides a reasonable use of the land while accommodating concerns of the neighborhood and maintaining a transition of land for which the approved land use plan designation of Commercial Office Park may be maintained.
2. Deny the application on the basis that the City's Land Use Plan designates the subdivision area as Office Park development. The City studied this area thoroughly during the development of the Comprehensive Plan, and after study and public input made a determination that the property was best suited for that designation. Residential property owners have purchased properties knowing the intended land use.

Mina Hall, 327 19th Avenue West, stated concern with current traffic and with any development creating even more congestion. Larry reviewed potential access points along 19th Avenue and Sheyenne Street.

Ms. Hall wondered if homes along 19th Avenue wouldn't just become commercial being they'd become an isolated island of houses within a commercial area.

Economic Development Director Matt Marshall stated the property is semi-complicated due to a pipeline cutting across the property, so it's a challenge no matter what is proposed. Discussion was held regarding the pipeline easement.

Applicant Dan Bueide stated that currently the entire parcel is designated office park, with a very limited number of uses allowed. They would like greater development flexibility. The Veteran's Boulevard Interchange area is pretty much filled up. They envision restaurants, fuel, limited service hotel, retail shops on about 10 acres. The commercial office park area would serve as a buffer. No matter how this area develops it will still generate traffic. By providing a variety of uses, they feel this would help to blend the traffic load rather than the early morning, lunch and later afternoon rush hour traffic that office park would generate.

There were no other comments from the public. The hearing was closed.

Mr. Bueide stated that access along Sheyenne Street would line up with Beaton Drive. He stated that the pipeline would most likely run along the street right-of-way. They propose diverting it further south.

Commissioner Kiewel made a motion for approval on the basis that it provides a reasonable use of the land while accommodating concerns of the neighborhood and maintaining a transition of land for which the approved land use plan designation of Commercial Office Park may be maintained. Commissioner Sheeley seconded the motion. No opposition. Motion carried.

The next item on the agenda was tabled at the last meeting. A13-62 Geron Subdivision, Subdivision, Rezoning from Agricultural to R-1E: Rural Estate District and Land Use Plan Amendment from Agricultural Preservation to Rural Residential, property in the SE¼ of Section 26, T139N, R50W, Mapleton Township, Cass County, North Dakota.

Tim reviewed the following:

At the November 12, 2013 meeting action was again tabled with agreement from the applicant in order for the property owner and opposing neighbor to find agreement on the existing easement on the property. Since the last meeting and prior to the packets being mailed out, it was been reported the neighbors had come to some form of an agreement and staff would uphold its previous recommendation. The property owners are no longer in agreement.

Staff recommends approval with the following conditions:

1. The Land Use Plan is amended from Agricultural Preservation to Rural Residential for the subdivision area.
2. An Attorney Title Opinion is received.
3. A certificate is received showing taxes are current.
4. A drainage plan is received and approved by the City Engineer.
5. Right of way is increased to 75' for Cass County Highway 8 (40th Ave W).
6. A residential structure is developed in the near future such that it meets the National Flood Insurance Program standards.
7. Any necessary easements are placed on the Final Plat.

Chair McDougall asked about the disagreement. Tim stated that staff still contends that the access easement is a civil matter; however, with the Land Use Plan Amendment, the property owners have a right to protest.

Applicant Craig Geron reviewed the site. He stated that he has a building under construction and wants to split his property into 2 lots to build his own home and option for an additional home for either his daughter or to sell. He also would like to have an easement onto his property to access the second lot.

Tim stated that with the conditional use permit in 2012, there was a condition to remove a building. Mr. Geron stated it would be removed after his building is constructed. He stated that his neighbors were concerned that he might subdivide the property into 2-3 lots. Ben Davidson stated that he's concerned with a development made up of 1 acre lots and outbuildings with heights over 20'. He argued that the building currently under construction was 25' which wouldn't meet the height requirement for the rural estate district.

Mr. Geron stated that he was under the impression if he subdivided the property into several lots, he'd then have to provide sewer and water. This was never his intent. He would like to build a home for himself and allow for an additional one for either his daughter or to sell.

Discussion was held regarding the easement. Lori Gerhardson stated that the driveway is on their property. They're concerned it'll become a public road. They'd like the easement revised or a new easement – either move it or keep the property zoned Ag.

Mr. Geron stated that he'd like a road/driveway going east and west to access the new lots. He agreed to delay action because Ben wanted to visit with his attorney to see how the easement would be affected with the zoning change. Mr. Geron stated that he just wants an opportunity to build his house and have the ability to build a home on a 3 acre parcel to the east.

Chair McDougall asked when subdivisions of less than 5 acres were allowed in this area. Larry stated that the existing property doesn't meet the Ag District regulations, so staff looked at the best/closest fit. It can't be left as Ag as it would continue the non-conformity. R-R requires 15 acres, so they tried to find zoning to it bring closer to conformity under the ordinance. With R-1E there is a minimum lot size, so the P&Z could require Mr. Geron to maintain the existing lot size or allow an additional lot.

Chair McDougall asked if he couldn't build a house on an Ag zoned parcel. Mr. Geron stated that he'd like the option to split the property up. Discussion was held on the original farmstead and minimum lot size. Larry stated if Mr. Geron would want to plat into 1 acre lots, it'd have to come back before the commission for public hearing review. Mr. Geron asked if he could separate his lot and zone it R-1E and leave the parcel to the east platted but zoned Ag. Chair McDougall stated that newly

created Ag parcels require a minimum of 40 acres.

Tim stated that a condition of the 2012 Conditional Use Permit was to subdivide and plat.

Mr. Geron stated that he's tired of the process and just wants to build his home. Tim stated that any house in the Ag district needs a Conditional Use Permit. If he wants to build a home it would need to be zoned R-1E. If it remains Ag he'd need to file a separate application for a conditional use permit and go through the public hearing process.

Ms. Gerhardson stated that she was concerned with the existing buildings. Larry stated that the existing buildings would be grandfathered in.

Discussion was held regarding the easement. Mr. Geron stated that he's been comfortable with the easement for the past 14 years. Ms. Gerhardson stated she was too until he proposed additional lots. Chair McDougall stated that the existing easement couldn't be revised as it would cut off access to Lori and Ben's lot to the north. Ms. Gerhardson stated that they own it so it shouldn't matter. Discussion was held regarding the potential for land locked parcels.

Commissioner Sheeley made a motion for approval based on staff recommendations. Commissioner Potter seconded the motion. No opposition. Motion carried.

Commissioner Johnson made a motion to adjourn. Commissioner Sheeley seconded the motion. No opposition. Meeting adjourned.